IN THE SUPREME COURT OF NEW ZEALAND

SC 70/2006
[2006] NZSC 78

BETWEEN	ALAIN YVES MAFART AND DOMINIQUE ANGELA FRANCOISE PRIEUR Appellants
AND	TELEVISION NEW ZEALAND LTD Respondent

Court: Blanchard, Tipping and McGrath JJ

Counsel: G P Curry and A J Harris for Appellants
W Akel and H Wild for Respondent

Judgment: 26 September 2006

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed with costs to the respondent of $2,500.

REASONS

[1] In circumstances that it is hard to imagine ever being repeated in this country, the appellants pleaded guilty to manslaughter in 1985. A videotape of the taking of their pleas exists. The present dispute is about whether TVNZ should be permitted to broadcast it. The High Court exercised its discretion in favour of allowing that to occur. The Court of Appeal has reviewed and confirmed that exercise of discretion. Nevertheless the appellants want to bring this question to a second appeal.

[2] They propose to argue in this Court that the Court of Appeal failed properly to weigh up the competing values of the appellants' privacy interests against the freedom of information interests championed by TVNZ. In particular, it is asserted,

the Court of Appeal failed to take account of the value of the orderly and fair administration of justice. This argument is put forward with reference to an unusual aspect of the earlier proceeding, namely an assurance at one time given to the appellants by the Judge who presided when their guilty pleas were made. That assurance has already been the subject of separate judicial review proceedings that were settled in 1987. The consent orders by which those proceedings were settled provided that the tapes became part of the High Court file and subject to the Search Rules, albeit with procedural requirements on the manner in which search applications were to be processed. In so providing they effectively replaced the earlier assurance, which must therefore be of limited significance in the overall balancing exercise required under the Search Rules.

[3] The In-Court Media Coverage Guidelines 2003, also mentioned in the appellants' submissions, can likewise be of no real significance, as the Court of Appeal found, in a case concerned with events so long ago. As acknowledged in previous applications to search the files, the Guidelines relate to media coverage of trials during their course, and have nothing to do with access to criminal files after a trial is concluded.

[4] We have not been satisfied that this is a proper case to be heard by this Court, directed as it is to a discretionary decision which has already been reviewed and confirmed by the Court of Appeal. The decision below turned upon a balancing exercise that involved the application of settled criteria to the particular facts. This is a very unusual case, which, an appeal on the merits having been heard and determined by the Court of Appeal, no longer raises any question of general or public importance. We are satisfied that we would not be assisted on the question of leave by having an oral hearing. We are also far from persuaded that the Courts below have erred in their assessment, let alone that it is arguable that they were plainly wrong.

Solicitors:
Russell McVeagh, Auckland for Appellants
Simpson Grierson, Auckland for Respondent